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August 28, 2000

Carol Browner  
Administrator  
U.S. EPA  
401 M Street  
Washington, DC 20460

Anne Goode, Director  
Office of Civil Rights  
US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Comments of draft Revised Guidance for Investigating Title VI Administrative Complaints, Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs**

Dear Administrator Browner and Ms. Goode:

The EPA's draft Revised Guidance for Investigating Title VI complaints is extremely bad news for the communities of color directly affected by the rules and good news for polluting industries and agencies desiring to ignore the widespread environmental justice complaints pandemic across the nation's people of color communities near environmental hazards, including Texas. The draft Title VI Guidance rules are a bureaucratic, legal, medical and technical nightmare for the public and will make it impossible for Title VI complaints to be accepted for investigation, which will allow a perpetuation of the current injustices and potentially lead to acceleration of new environmental racism cases! Is this EPA's and the Clinton Administration's intent--to ignore environmental hazards, as well as to support and cover-up thousands of environmental injustices across America, and to allow the creation of a new universe of environmental hazards in people of color communities across America? These Title VI Guidance rules are so bad and unjust that their implementation will set back environmental justice and civil rights decades if EPA adopts them as proposed, so the best recommendation is to scrap them and start all over.

The Title VI Guidance rules turn the 1964 Civil Rights Act on its head and reveals that the President's 1994 Executive Order on Title VI environmental justice as basically meaningless words on paper and that the current administration has no real plans or intentions of implementing protective environmental justice rules. The Title VI Guidance rules appear to be not only inappropriate and inconsistent with civil rights laws, but they are illegal. Is this the civil rights legacy and environmental justice non-protection that President Clinton intends to leave as an example of his leadership? Hopefully that's not the case and EPA can still redraft more protective Title VI Guidance rules.

Communities of color in Texas have a huge stake in the Title VI Guidance rules because there are dozens of such communities and neighborhoods that are currently being and have been for years disproportionately impacted by major and minor environmental hazards across the state. Many communities suffer cumulative pollution assaults and burdens of numerous chemicals and exposures over time. As a result of the pandemic environmental injustice in Texas' communities of color over decades, a series of Title VI complaints have been filed with EPA since 1993 and nothing has resulted from EPA's acceptance of these complaints.

## LIST OF PENDING ENVIRONMENTAL JUSTICE SITES IN TEXAS

List of Texas Environmental Justice Sites under Governor Bush and the Texas Natural Resource Conservation Commission (TNRCC) includes many Title VI complaints to EPA about TNRCC noncompliance and Dallas citizens filed even a civil rights lawsuit against the TNRCC.

1. East Houston (East Harris County) - leads nation's urban areas in toxic air pollution including benzene; nation's largest concentration of oil refining-petrochemical plants, hazardous waste incinerators, bulk chemical-oil-fuel tank farms, smoke stacks and pipelines; hundreds of chemical warehouses; several paper mills, pesticide mfg, superfund sites, etc.
2. Corpus Christi (Nueces County) - 15 miles of massive refinery-petrochemical complex, bulk chemical-oil-fuel tank farms, pipelines, sour gas plant, contamination sites, sewage treatment, outdoor petroleum coke storage, cement storage, power plant, military site.
3. Texas City (Galveston County) - major refinery-petrochemical complex, bulk chemical-oil-fuel tank farms, pipelines, superfund sites.
4. Port Arthur (Jefferson County) - major refinery-petrochemical complexes, hazardous waste incinerator, bulk oil-fuel-chemical tank farms, pipelines, abandoned toxic sites.
5. Beaumont (Jefferson County) - major refinery-petrochemical complex, bulk chemical-fuel-oil tank farms, pipelines, pesticide plants, and more.
6. El Paso (El Paso County) - major petroleum refineries, smelters, bulk oil-fuel tank farms, pipelines, numerous manufacturing plants.
7. Sweeny (Brazoria County) - major refinery-petrochemical complex, bulk oil-fuel tank farms.
8. West Dallas (Dallas County) - hazardous waste storage and processing, lead smelters causing lead contamination, bulk gasoline tank farms, and other sites.

9. South Dallas (Dallas County) - massive sprawling illegal dumps next to black neighborhoods.
10. Winona-Tyler (Smith County) - American Ecology's hazardous waste processing, storage and deep injection well facility destroyed small rural black community and slave cemetery.
11. East Austin (Travis County) - East Austin bulk gasoline tank farm, pipelines, electronics manufacturing plants, waste processing and recycling facilities, power plants, and more.
12. North Ferris (Ellis County) - Waste Management regional garbage landfill site.
13. South Frisco (Collin County) - GNB lead battery recycling and other industrial sites.
14. South Odessa (Ector County) - major petroleum refinery-petrochemical complex, contaminated well water, hazardous waste injection sites.
15. Sierra Blanca (Hudspeth County) - nation's largest sewage sludge dump, proposed nuclear dump.
16. Robstown (Nueces County) - commercial hazardous waste injection wells and contamination.
17. East San Antonio and Southwest San Antonio (Bexar County) - military toxic waste sites, hazardous waste processing, regional garbage dumps, bulk jet fuel-gasoline tank farms, superfund sites, and miscellaneous environmental hazards.
18. Bryan (Brazos County) - Elf Atochem/Pennwalt arsenic acid-pesticide plant contaminated the City of Bryan with arsenic dust contributing to recent cluster of anencephalic births.
19. College Station-Brushy (Brazos County) - Texas A & M pig farm relocated from site next to the George Bush Presidential Library to next to black community, Brushy near other unwanted sites.
20. Texas/Mexico border communities: Brownsville, Laredo, Eagle Pass, Harlingen, El Paso - industrial plants, dumps, and toxic waste sites and other environmental hazards.
21. Longview (Harrison county) - chemical plant and municipal sewage treatment plant.
22. Brenham (Austin County) - garbage waste transfer station sited in black neighborhood.
23. Pittsburg (Camp County) - Pilgrim's Pride chicken processing plant site, incinerator.

24. Texarkana (Bowie County) - Superfund site from old creosote plant at Carver Terrace.
25. Lubbock (Lubbock County) - burial vault industrial plant with toxic air pollution.
26. Fort Worth (Tarrant County) - steel and miscellaneous industrial plants.
27. Waco (McLennan County) - industry and bulk gasoline tank farms.
28. Marshall (Harrison County) - major chemical manufacturing site.
29. Waller County - proposed American EnviroGuard Commercial medical waste incinerator.
30. Three Rivers (Live Oak County) - major petroleum refinery, oil-fuel tank farms, and pipelines.
31. Sommerset (Bexar County) - sour crude oil tank battery and illegal permitting.
32. Mt. Pleasant (Camp County) - Pilgrim's Pride chicken processing plant site.
33. Rosenberg (Fort Bend) - closed municipal landfill leaking methane gas and causing other problems.
34. Commerce (Hunt county) - VPG/Hi-Yield arsenic-pesticide plant left arsenic contaminated site and ground water contamination.
35. Bonham (Fannin county) - VPG/Hi-Yield contaminated arsenic waste dumped and may have contaminated ground water.

Several of the obvious concerns about EPA's Title VI Guidance document are summarized here. The draft Title VI document is so bad that you could write a book criticizing it.

If EPA moves forward with it's new Title VI Guidance as proposed, environmental protection for communities of color will move backwards rather than forwards as it may serve as a justification for perpetuating regulatory agencies past practices into the future of simply rubberstamping environmental injustices as reasonable and fair treatment of such communities under the EPA's Civil Rights policies and procedures.

EPA seems to be relying on a heavy bureaucratic process to overwhelm and discourage people of color communities from submitting Title VI complaints - EPA's Title VI Guidance document basically sets too many bureaucratic barriers for communities to hurdle considering that so many lack the necessary legal, technical, economic, social and political resources to overcome and file successful Title VI complaints. Without such resources, it will be extremely difficult for such communities to prepare satisfactory

Title VI complaints that meet EPA's requirements to be accepted for investigation and agency action. Even with the proper resources, the EPA's barriers will make it more difficult for any Title VI complaints to be investigated and helpfully resolved to assist the impacted community in a positive way. Unfortunately, this new bureaucratic process to review future EJ complaints for consideration by the agency appears consistent with EPA's inadequate actions regarding current EJ complaints.

EPA appears to want to prohibit or at least discourage Title VI complaints as far as accepting them for agency investigation and action - EPA's Title VI Guidance document sets an exceptionally high burden of proof (legally and technically for evidence) on people of color communities to try to establish that disparate pollution impacts are occurring by requiring them to make submission of unreasonable evidence to prove up their health effects. The EPA has certainly not required state agencies and industry to submit epidemiological studies or any semblance of community health symptom surveys to scientifically support that hazardous facilities are not causing adverse impacts on communities. Yet EPA is expecting communities to research and submit exhaustive and novel credible scientific evidence proving a correlation between toxic emissions from the hazardous facilities and community illnesses. The current state of science on health effects and toxic exposure is encumbered with serious difficulties and research questions in proving cause-effect relationships which EPA does not require regulators or the regulated industry to submit for obtaining pollution permits. EPA is expecting communities of color to compile a body of health effects evidence to support their claim that not even the best scientists could assemble given today's limited knowledge on chemical exposure.

EPA fails to give recognition to existing discriminatory impact patterns across the nation as evidence of racial discrimination and constituting violations of Title VI of the 1964 Civil Rights Act - EPA's Title VI Guidance document totally ignores the current existence of disparate concentrations of various hazardous facilities with toxic emissions in the neighborhoods and communities of color. By applying a persistent agency philosophy to subtly obfuscate citizen efforts to submit Title VI complaints, EPA is acting in a consistent pattern exhibited since the EJ issue first appeared and token efforts were applied to the apparent problem. EPA is completely ignoring that people of color neighborhoods and communities have been routinely targeted to build hazardous and toxic facilities, which flies in the face of civil rights legal victories and statute.

EPA relies on an illegal and arbitrary time period for receipt of complaints - EPA's Title VI Guidance document requires that a Title VI complaint must be submitted within 180 days of the alleged discriminatory activity which is inconsistent with Title VI of the 1964 Civil Rights Act where no such time line is required since several years may be necessary to establish the pattern of discriminatory environmental regulation by an agency and toxic polluter. EPA has chosen an arbitrary time requirement in order to potentially discourage certain older Title VI complaint actions where individuals may need considerable time to perform their own investigation and establish reasonable evidence as a basis that racial discrimination occurred.


EPA's Title VI Guidance document appears to be significantly favoring industry and state environmental agencies over impacted communities in all phases of the Title VI complaint process.

EPA is willing to allow unusual evidence by state agencies - EPA's Title VI Guidance document opens the door to state/local environmental programs to consider the so called economic interests and benefits of a pollution permit as justification for the specific project and negate community Title VI concerns.

The Galveston-Houston Association for Smog Prevention and the Lone Star Chapter of the Sierra Club in requesting that you act in your capacity as Administrator of the US Environmental Protection Agency to formally redraft and prepare the most publicly protective Environmental Justice proposal under Title VI of the 1964 Civil Rights Act as expeditiously as possible. The health of nearly 2 million Texans depends upon EPA adopting the most protective EJ rule.

Cities in Texas like the Houston, Texas City, Dallas, Fort Worth, Beaumont, Port Arthur Corpus Christi, El Paso, Longview, Tyler, Marshall, Austin, and San Antonio are already suffering under too much air pollution and are a major contributing source to this public health burden. We urge EPA to stringently protect the health of several million people of color in Texas.

Respectfully yours,

A handwritten signature in cursive script, reading "Neil J. Carman", followed by a long horizontal flourish.

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cc: President Clinton and Vice President Al Gore